

California High-Speed Train Project



Request for Proposal for Design-Build Services

RFP No.: HSR 11-16

Book 2, Part A, Subpart 2: Special Provisions

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PART A.2 – Special Provisions

1 Contract Type

The design-build contract is a firm fixed price contract.

2 Notice to Proceed

The Contractor shall not proceed with any Work under the Contract without a written notice to proceed for such Work from the Authority. Any Work performed or expenses incurred by the Contractor prior to the Contractor's receipt of a written notice to proceed for such Work is the Contractor's risk.

- NTP-1 authorizes Work on Construction Package 1A and Construction Package 1B.
- NTP-2 authorizes Work on Construction Package 1C.

If the Authority issues NTP-1 within 180 days after the Proposal Deadline, the Contract shall remain in full force and effect without escalation or any other modification to the terms and conditions hereof. If the Authority issues NTP-1 after 180 days after the Proposal Deadline due to no fault, negligence, act or failure to act of any Contractor-Related Party, the Contract shall remain in full force and effect, without any modification to the terms and conditions hereof, provided that the Contract Price may be subject to an adjustment using the following formula:

$$\{[(\text{Final Component Value CCI San Francisco} / \text{Base Component Value CCI San Francisco}) + (\text{Final Component Value CCI Los Angeles} / \text{Base Component Value CCI Los Angeles})] / 2\} \times \text{Contract Price} = \text{Adjusted Contract Price}$$

Where:

- **Base Component Value CCI San Francisco** - the latest current Construction Cost Index (CCI) values published by Engineering News Record as of 180 days after the Proposal Deadline for San Francisco.
- **Base Component Value CCI Los Angeles** - the latest current CCI values published by Engineering News Record as of 180 days after the Proposal Deadline for Los Angeles.
- **Final Component Value CCI San Francisco** - the latest current CCI values published by Engineering News Record as of the date of issue of NTP-1 for San Francisco.
- **Final Component Value CCI Los Angeles** - the latest current CCI values published by Engineering News Record as of the date of issue of NTP-1 for Los Angeles.

If NTP-1 has not been issued within 360 days after the Proposal Deadline due to no fault, negligence, act or failure to act of any Contractor-Related Party, the Contractor may seek to



negotiate a Change Order including an extension in time for issuance of NTP-1 and an increase in the Contract Price mutually acceptable to the Contractor and the Authority. If the Contractor does not wish to seek a Change Order as provided above or if the Authority fails to issue a Change Order acceptable to the Contractor, then the Contractor's sole remedy shall be to terminate the Contract, and such termination shall be deemed to be a termination for convenience under the "Termination for Convenience" clause (Section 40) of the General Provisions.

Any price increase under this Section 2 shall be amortized proportionally over all Work remaining to be performed, and shall be evidenced by a Change Order.

The Authority may issue NTP-2 at any time on or before 120 days after NTP-1. If NTP-2 has not been issued within 120 days after NTP-1 due to no fault, negligence, act or failure to act of any Contractor-Related Party, Construction Package 1C will be deleted from the Work and the Contract Price will be reduced by the price for Construction Package 1C set forth in the Signature Document. Such changes shall be evidenced by a Change Order. At any time the Authority may seek to negotiate a Change Order regarding Construction Package 1C mutually acceptable to the Contractor and the Authority.

3 Completion Deadlines

The "Substantial Completion Deadline" is defined as 54 months after NTP-1, as such deadline may be extended in accordance with the Contract Documents. The Contractor shall achieve Substantial Completion by the Substantial Completion Deadline.

The "Final Acceptance Deadline" is defined as 56 months after NTP-1, as such deadline may be extended in accordance with the Contract Documents. The Contractor shall achieve Final Acceptance by the Final Acceptance Deadline.

4 Maintenance of Access

The Contractor shall maintain access to the business at parcels APN 459-023-56, 459-023-57 and 459-023-59, commonly known as La Tapatia, through the driveway to East Belmont Street, approximately 400-feet east of North H Street, at all times during construction and after completion of the Project.

5 General Office Requirements for Facilities Provided by the Contractor

The Contractor shall provide offices in good repair and in a clean and sanitary condition, at least of the same quality as the facilities that the Contractor provides its counterpart project management, design, and field staff. These facilities shall be available for occupancy as specified. The Contractor shall secure sites, obtain all site permits, install, set up, and provide utility services, and maintain the facilities as part of the Work. The offices shall have at least



two exits from each building/trailer. Entrance to offices shall be secured with a door lock plus a dead bolt lock. All interior spaces shall have overhead lighting meeting OSHA and code requirements for office space. Each office space shall have at least two duplex receptacles. Minimum circuit capacity shall be 20 amps. Each office space shall be wired for phone and computer Local Area Network (LAN). The office space shall include a conference room large enough for 20 people and separate restrooms for male and female. In the event that office spaces or appurtenant facilities are destroyed or damaged during the Contract period, except by fault of the Authority or its personnel, the Contractor shall, at its expense, repair or replace those items, which the Contractor provided, to their original condition within 10 days. For the facilities it provides, the Contractor shall have the following responsibilities:

- Be responsible for installing, maintaining, and paying all utilities.
- Provide daily janitorial service (except weekends and Authority Designated Holidays) and shall provide service and maintain trash containers and trash pickup service.
- Be responsible for maintenance of the exterior area of office spaces including access to parking areas.
- Include desks, chairs, filing cabinets, bookcases and telephones in all offices.
- Provide copying, computer, printing and facsimile equipment services, including paper, supplies and maintenance.
- Be responsible for disposal or removal of all Contractor-provided facilities and any site restoration Work required.
- Provide ventilation and air conditioning/cooling systems capable of maintaining temperature between 70 and 75 degrees Fahrenheit in all spaces throughout the year.
- Provide facilities that meet local code requirements for office space.
- Provide telephone service with outside lines for each office space in the field office facility. At least one additional line will be dedicated for facsimile service and one additional line will be dedicated to high speed data service. The phone system shall be capable of providing voicemail service to each extension. The Authority will pay all local and long distance phone charges after installation.
- Provide and maintain all Authority offices that it provides for at least 30 Days after Final Acceptance of the Work included in the Contract or until facilities are no longer needed, whichever is earlier, unless otherwise agreed by the Authority in writing. Ownership of the field office, equipment and telephone shall remain with the Contractor and shall be removed when instructed by the Authority.

5.1 Field Office for Authority's Field Staff

The Contractor shall provide a field office for the Authority's field staff co-located with the Contractor's management personnel. Not later than 15 Days after NTP-1, the Contractor shall provide office space not less than the size indicated below:



Item	No. Required	Requirement
Private Office	1	Min 150 square feet, enclosed with lockable door
Staff Cubicles	50	Min 80 square feet each
Conference room	1	Min 500 square feet, enclosed, with lockable door
Visitor cubicles	5	Min 60 square feet each
Storage/filing space	1	250 square feet, enclosed, with lockable door
Restrooms	5	Men's & women's
Paved parking	50	Min 50 spaces including 5 visitor spaces
Break room	1	Min 150 square feet, 8 feet of counter space with sink
Server room space	1	Sufficient to support the Authority's computer requirements

The Contractor shall provide a well-graded site for the office with access road and parking area. The parking area shall be reasonably level. The parking area, including visitor parking, shall have an all-weather surface.

If the Contractor has a separate design office, the Contractor will make available at that location 20 typical staff cubicles for the Authority staff. If the Contractor elects to set up remote field offices along the alignment during construction, the Contractor will make available at each of these locations two typical staff cubicles for the Authority staff.

The Contractor shall equip the field office with the following:

- **Security** – Either a 24-hour security service or silent watchmen-type security system.
- **Lighting** – The Contractor shall install sufficient exterior security lighting that is automatically activated at low light levels to maintain two footcandles of lighting in the office site area, including parking.
- A conference room with a large table and 20 chairs.
- Individual office file cabinets and 25 total commercial grade 5-drawer vertical lockable file cabinets for project files.

5.2 Connectivity

The Contractor shall make necessary arrangements for allowing access to the Authority-provided server, printers and other hardware either through “hardwiring” or remote access. The Contractor shall also make arrangements for all of the Authority's computers to be linked directly to the Authority's network through a T1 internet connection.

5.3 Backup of Electronic Files and Protection of Hardcopy Files

The Contractor shall provide a secure, fireproof location in which to store electronic and hardcopy backup files. The Authority's representative will provide backup for their electronic files.



5.4 Site Identification Signing

The Contractor shall provide site identification signing at all project offices and all sites of Work.

5.5 Communication

The Contractor shall establish and maintain telephone and radio communications, as appropriate, to control the Work and maintain communications with the Authority, Utility Owners, and local and regional emergency response agencies or entities. The Contractor shall not use police or other emergency services' radio frequencies.

The Contractor shall provide daily courier service between the Contractor's main Project office and the Authority's and any Authority field office on the Project at 10:00 a.m. and 3:00 p.m. each Working Day or as mutually agreed by the Contractor and the Authority.

6 Provisional Sums

The Authority has reserved funds in the amount set forth in the Signature Document for the following Provisional Sums:

- Utility Provisional Sum
- Construction Contract Work Provisional Sum

To the extent of any available funds in the Utility Provisional Sum, if the Contractor is entitled to a Change Order pursuant to the "Inaccuracy Increasing the Work" clause (Section 49.1.5.1) of the General Provisions for additional costs attributable to the existence of an unidentified underground Utility, the Authority may elect, in its sole discretion, to pay for said Change Order with funds from the Utility Provisional Sum.

To the extent available funds remain in the Construction Contract Work Provisional Sum, the Authority may elect, in its sole discretion, to pay for an Owner Directed Change related to the design and construction of permanent improvements necessary as part of any right-of-way acquisition, including but not limited to improvements related to maintenance of access for specific property and/or grade separations, with funds in the Construction Contract Work Provisional Sum.

If, following achievement of Final Acceptance and resolution of all claims and disputes relating to the Work (including all claims and stop notices of Subcontractors, laborers and Third Parties relating to the Work), a positive balance remains in the Utility Provisional Sum, the balance will be deducted from the Utility Provisional Sum and shall be credited to the Authority. If, following achievement of Final Acceptance and resolution of all claims and disputes relating to the Work (including all claims and stop notices of Subcontractors, laborers and Third Parties relating to the Work), a positive balance remains in the Construction Contract Work Provisional



Sum, the balance will be deducted from the Construction Contract Work Provisional Sum and shall be credited to the Authority.

7 Liquidated Damages

In the event that the Contractor fails to achieve Substantial Completion by the Substantial Completion Deadline, the Contractor agrees to pay the Authority Liquidated Damages for each day (or any part thereof) of delay in the amount of \$60,000/day.

Liquidated damages will be subject to a cap set forth in the Signature Document.

8 Environment

In August 2011, the Authority and the Federal Railroad Administration (FRA) released for public review and comment two environmental documents: the California High-Speed Train, Merced to Fresno Section Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS), and the Fresno to Bakersfield Section DEIR/EIS. Information for the Merced to Fresno environmental document, including discussion of permitting requirements and proposed mitigation commitments, can be found in Book 3.

http://www.cahighspeedrail.ca.gov/lib_Merced_Fresno.aspx.

Similarly, information for the Fresno to Bakersfield environmental document can be found in Book 3.

http://www.cahighspeedrail.ca.gov/Lib_Fresno_Bakersfield.aspx

The comment period for both environmental documents closed on October 13, 2011.

Following the close of the comment period on the Merced to Fresno Draft EIR/EIS, the Authority and FRA considered all substantive comments, and identified a preferred alignment alternative to be included in the Final EIR/EIS for the project. The Authority and FRA then released the Final EIR/EIS for the Merced to Fresno HST Project on April 20, 2012. On May 3, 2012, the Authority Board certified the Final EIR/EIS and adopted the Hybrid Alternative as the north/south alignment (excluding the Wye). On May 4, 2012, a Notice of Determination (NOD) was filed with the State Clearinghouse. The FRA issued its Record of Decision (ROD) on September 18, 2012.

In response to public input on the Draft Fresno to Bakersfield environmental document, the Authority and FRA prepared and on July 20, 2012, released a Revised Draft EIR/Supplemental Draft EIS (DEIR/EIS) for the Fresno to Bakersfield HST Project for additional public comment. The comment period for the revised DEIR/EIS closes on October 20, 2012. The Fresno to Bakersfield Final EIR/EIS is anticipated in the spring of 2013 after which Authority Board approval of the final document and subsequent ROD/NOD is anticipated by June of 2013.



8.1 Environmental Approvals and Permits

In preparing the environmental documents, the Authority has obtained agency approvals needed for the ROD (e.g., a Section 7 Biological Opinion from the U.S. Fish and Wildlife Service and NOAA Fisheries) and initiated work to secure a Section 404 individual project permit from the U.S. Army Corps of Engineers. The Authority is obtaining a permit for the entire HST section based on a minimum of 15 percent design (with the exception of the Central Valley Flood Protection Board encroachment permits, the application for which will require submittal of 65 percent design). Subsequently the Contractor shall obtain clearances from the applicable agencies for the Construction Package when subsequent design results in impacts that are different than the permits obtained by the Authority. It may be the case that an Agency may request to review the Contractor's design to verify that the design is consistent with the permit that was issued to the Authority. The Authority's approach to environmental approvals, permits, and the assignment of the Authority and the Contractor responsibilities for Construction Package 1 is shown in the Approach for Obtaining Initial Construction Segment (ICS) Environmental Approvals/Permits in Book 3.

To the extent the Authority fails to provide any Authority Provided Approval by the deadline therefor as set forth in the Approach for Obtaining ICS Environmental Approvals/Permits in Book 3, and such failure has the effect of increasing the time of performance of the Work, then the Contractor may request a time extension (excluding delay damages) in accordance with the "Changes" clause (Section 17) of the General Provisions.

Notwithstanding "Permits, Fees and Notices" (Section 7.7) and "Environmental Requirements" (Section 42) of the General Provisions, the Authority will, before 180 days after NTP-1, directly implement all off-Site mitigation measures and permit conditions for short term and long term habitat acquisition, preservation, creation, restoration, enhancement and maintenance.

The geographic limits of Construction Packages 1A and 1B are evaluated in the Merced to Fresno EIR/S (i.e., from an area north of the San Joaquin River south to the end of the proposed Fresno HST Station track), while the geographic limits for Construction Package 1B and 1C are evaluated as part of the Fresno to Bakersfield EIR/S (i.e., from the Fresno station track south to East American Way in Fresno).

9 Warranty

In addition to the warranties required by the "Warranty" clause (Section 7.8) of the General Provisions, the Contractor warrants that the Project, other than elements of the Project that will be owned by Third Parties, remains in the same condition as it is in at Final Acceptance excluding normal wear and tear and any work performed by or damage caused by contractors other than Contractor-Related Entities working at the Site. Also excluded from the warranty is performance of security services. During the warranty period, the Contractor shall be subject to the "Risk of Loss; Protection of Existing Site" clause (Section 7.9) of the General Provisions, subject to the "Use and Possession Prior to Completion" clause (Section 7.15) of the General



Terms, provided that during the warranty period the Contractor shall not be responsible for rebuilding, repairing and restoring work not performed by Contractor-Related Entities.

The warranties required by the “Warranty” clause (Section 7.8) of the General Provisions, as supplemented by this Section, commence upon Substantial Completion and continue for a period of two years from Final Acceptance. This initial warranty shall be priced in the Contract Price. The Authority also has up to five options to extend the initial warranty period in one-year increments (up to five additional years) at any time before the expiration of any ongoing warranty period by notifying the Contractor of (i) its intent to exercise its option to extend the warranty, (ii) the length of the extension and (iii) the price of the extension. If the Authority exercises all five one-year warranty extension options, the total warranty period will be seven years.

For each option to extend the warranty under this “Warranty” clause that the Authority elects to exercise, the Contract Price will be increased by the Warranty Option price or the sum of the Warranty Option prices as set forth in the Signature Document for each one-year extension of the warranty period that the Authority exercises (the “Extended Warranty Price”). For example, if the Authority initially elects to extend the warranty by three years, the initial Extended Warranty Price shall be the sum of the Warranty Option 1st Year price, the Warranty Option 2nd Year price and the Warranty Option 3rd Year price. If the Authority subsequently elects to extend the warranty by a fourth year, the subsequent Extended Warranty Price shall be the Warranty Option 4th Year price.

Notwithstanding the foregoing, the warranty term for elements of the Project that will be owned by Third Parties will be as follows:

- If the warranty term is governed by a Master Agreement or Task Order, the warranty for such element shall remain in effect for such term as required under the applicable Master Agreement and/or Task Order (not subject to the Authority’s option to extend the warranty up to five years).
- If the warranty term is not governed by a Master Agreement or Task Order, the warranty for such element shall commence upon completion of such element and continue for a period of one year thereafter (not subject to the Authority’s option to extend the warranty up to five years).

The warranty on any repair, rework or replacement as a result of a warranty claim or damage as a result of this clause shall extend beyond the original warranty period if necessary to provide at least a one year warranty period from the date of acceptance of the repairs, rework, or replacement.

Upon Final Acceptance, the Contractor will have the right to replace the performance bond required hereunder with a replacement bond in the amount of 10 percent of the sum of the Total Contract Price in a form satisfactory to the Authority in its sole discretion guaranteeing due and punctual performance of the Contractor’s obligations under the Contract that survive



Final Acceptance, or with such other security as is approved by the Authority in its sole discretion.

For each option that the Authority exercises, if any, the Contractor may elect to provide to the Authority a letter of credit in form acceptable to the Authority for the warranty period as security for the Contractor's continuing obligations under the Contract, in the amount of the Extended Warranty Price, prior to the expiration of the current warranty period, in lieu of the replacement performance bond.

10 Insurance

The Contractor shall procure and maintain, or cause to be maintained, insurance as specified in this "Insurance" clause. The insurance provided hereunder shall be available for the benefit of the Contractor, the Authority and any Indemnified Persons as specified herein with respect to covered claims, but shall not be interpreted to relieve Contractor of any obligations hereunder. Unless otherwise specified in the Contract, all insurance required hereunder shall be procured from insurance or indemnity companies with an A.M. Best and Company rating level of A- or better, Class VIII or better and with companies or through sources approved by the Authority. Unless otherwise indicated below, the policies shall be kept in force throughout the term of this Contract and warranty period(s).

10.1 Minimum Insurance Requirements

10.1.1 Worker's Compensation

The Contractor and its Subcontractors shall provide Workers' Compensation insurance as required under California statute including coverage for Employer's Liability in an amount not less than \$2,000,000 per accident. If applicable, the Contractor and its subcontractors shall also provide coverage for claims asserted under the Longshoremen's and Harbor Workers Compensation Act (LHWCA) and the Jones Act, as required.

10.1.2 Commercial General Liability

The Contractor and its Subcontractors shall provide Commercial General Liability (CGL) coverage, on a primary basis, for bodily injury, property damage, personal injury and advertising injury liability written on an occurrence form that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) form CG 00 01 12 04. The commercial general liability insurance shall include, but not be limited to, coverage for liability arising out of:

- i. Fire legal liability (not less than the replacement value of the portion of the premises occupied)
- ii. Blanket contractual
- iii. Independent contractors



- iv. Premises operations
- v. Products and completed operations for a minimum of six years following Final Completion and
- vi. Work within 50 feet of a railroad

This coverage shall have an annual minimum limit of \$2,000,000 per occurrence, \$4,000,000 general annual aggregate and \$4,000,000 products/completed operations aggregate. The Contractor and its Subcontractors shall name the Authority and the Indemnified Persons as additional insured with respect to liability arising out of the Project, or any acts, errors or omissions of any Contractor-Related Entity.

10.1.3 Automobile Liability Insurance

The Contractor and its Subcontractors shall provide Automobile Liability insurance in an amount not less than \$2,000,000 per occurrence combined single limit, with the Authority and the Indemnified Persons named as additional insureds.

10.1.4 Excess/Umbrella Liability Insurance

The Contractor shall provide excess/umbrella liability insurance with limits not less than \$200,000,000 which will provide coverage at least as broad as the primary coverage set forth in this "Insurance" clause (other than this "Excess/Umbrella Liability Insurance" clause), in excess of the amounts set forth in this "Insurance" clause (other than this "Excess/Umbrella Liability Insurance" clause). The Contractor shall name the Authority and the Indemnified Persons as additional insured with respect to liability arising out of the Project or any acts, errors or omissions of any Contractor-Related Entity.

10.1.5 Professional Liability Insurance

The Contractor shall provide, or shall cause to be maintained, professional liability coverage with limits not less than \$25,000,000 per claim. The professional liability coverage shall protect against any negligent act, error or omission arising out of design or engineering activities with respect to the Project. The policy shall have an extended reporting period of not less than five years from the date of Final Acceptance.

10.1.6 Environmental Liability

The Contractor shall provide, or cause to be maintained, environmental liability coverage on a claims made basis with limits of not less than \$25,000,000 per claim. The policy shall include the Authority and the Indemnified Persons as additional insured with respect to liability arising out of the Project or any acts, errors or omissions of any Contractor-Related Entity. The policy shall have a five year extended reporting period and cover claims made on and prior to Final Acceptance and claims made after Final Acceptance but within the extended reporting period.



10.1.7 Builder's All Risk

The Contractor shall provide, or cause to be maintained, builder's all risk insurance to include the interests of Contractor, its Subcontractors, the Authority and the Indemnified Persons, as their respective interests may appear. The insurance shall be maintained until Final Acceptance.

The policy shall be written on a builder's risk "all risk" form on a replacement cost basis including, but not limited to:

- i. Coverage for any ensuing loss from faulty workmanship, nonconforming work, materials, omission or deficiency in design or specifications
- ii. Coverage against damage or loss caused by earth movement, flood, fire, theft, vandalism and malicious mischief and accidental breakdown of machinery
- iii. Coverage during operational testing
- iv. Coverage for removal of debris
- v. Coverage for buildings, structures, including temporary structures; machinery, equipment, facilities, fixtures and all other property constituting a part of the Project
- vi. Transit coverage, including ocean marine coverage (unless insured by marine cargo insurance); a "50/50 Clause" and
- vii. Sub-limits sufficient to insure the full replacement value of any key equipment item (e.g. specialized crane, specialized rail car, TBM, etc.)

The policy shall have a minimum policy limit of the "replacement cost value" based on "maximum probable loss" for each segment, except for earth movement and flood coverage. In satisfaction of the requirements of subsection (vi) above concerning "ocean marine coverage," Contractor may obtain separate ocean marine insurance on an "all risk" basis known as "Institute Cargo Clauses (A)," including war, riots and strikes, covering all materials and equipment associated with the Work at full replacement value while in transit, shipment and/or moorage until the date of Final Acceptance. In any policies procured pursuant to this subsection, deductibles or self-insured retentions shall be no greater than \$100,000 for all perils, except for two percent of the segment value for earth movement and flood perils.

10.1.8 Railroad Protective

If applicable, the Contractor shall provide, or cause to be maintained, any coverage as may be required by any railroad as a condition of the railroad's consent for entry onto railroad facilities or property. Such policy shall be effective during the period any Work is being performed within 50 feet of any railroad right of way.

10.1.9 Contractor's Equipment

If applicable, the Contractor and its subcontractors shall maintain throughout the term of the Contract, Contractor's Equipment insurance covering loss or damage to their respective



equipment, tools and other property. In the event the Contractor or its Subcontractors choose to self-insure part or all of their respective equipment, prior written acceptance by the Authority shall be obtained.

10.1.10 Aircraft Liability

If applicable, the Contractor shall provide, or cause to be maintained, Aircraft Liability insurance with a limit of not less than \$10,000,000 per occurrence in all cases where any aircraft is used on the Project that is owned, leased or chartered by any Contractor-Related Entity or its subcontractors of any tier protecting against claims for damages resulting from such use. Any aircraft intended for use in performance of the Work, the aircraft crew, flight path and altitude, including landing of any aircraft on the Project or on any property owned, rented or leased by the Authority or the Indemnified Persons shall be subject to review and written acceptance by the Authority prior to occurrence of any such usage. If any aircraft are leased or chartered with crew and/or pilot, evidence of non-owned aircraft liability insurance will be acceptable in lieu of the coverage listed above, but must be provided prior to use of the aircraft and in a limit of not less than \$2,000,000 per passenger seat, including crew. Such non-owned aircraft liability insurance shall name the Authority, and the Indemnified Persons as additional insured with respect to liability arising out of the Project or any acts, errors or omissions of any Contractor-Related Entity.

10.1.11 Marine Liability

If applicable, the Contractor shall provide, or cause to be maintained, marine protection and indemnity (P&I) insurance for all liabilities arising out of the operation of a watercraft or vessel used on the Project that is owned, leased or chartered by any Contractor-Related Entity or its subcontractors of any tier. In the event that marine related activities are to be performed exclusively by subcontractors, the Contractor shall require such subcontractors to satisfy the requirements of this Section 10.1.11, Marine Liability. The policy shall include, but not be limited to coverage for bodily injury, illness and/or loss of life to any person or crew member (including any and all claims arising pursuant to the Jones Act and claims for maintenance and cure), damage to cargo while loading, carrying or unloading cargo, damage to piers and docks, pollution liability, and removal of wreckage as required by Law. Such coverage shall have limits of not less than \$10,000,000 per occurrence. If any watercraft or vessels are leased or chartered with crew, evidence of non-owned watercraft liability ("Charterer's Liability") insurance complying with the requirements of this Section 10.1.11, Marine Liability will be acceptable but shall be provided to the Authority prior to use of the watercraft or vessel. The Authority and the Indemnified Persons shall be additional insured with respect to liability arising out of the Project or any acts, errors or omissions of any Contractor-Related Entity.

10.2 General Insurance Requirements

10.2.1 Premiums and Deductibles

The Contractor, and/or its Subcontractors, shall be responsible for payment of premiums for all insurance required under this "Insurance" clause. The Contractor further agrees that for each



claim, suit or action made against insurance provided hereunder, the Contractor, and/or its subcontractors shall be solely responsible for all deductibles.

10.2.2 Subcontractor Insurance Requirements

The Contractor shall cause each subcontractor to provide and maintain such insurance that complies with the requirements of the Contractor in circumstances where the subcontractor is not covered by the Contractor-provided insurance; provided that the Contractor shall have sole responsibility for determining the types and limits of coverage required to be obtained by Subcontractors (if any), which determination shall be made in accordance with reasonable and prudent business practices. The Contractor shall cause each such Subcontractor to include the Authority and the Indemnified Persons as additional insured under such subcontractors' insurance policies obtained. The Contractor shall require each such Subcontractor to require that its insurers agree to waive any subrogation rights the insurers may have against the Authority and the Indemnified Persons. If requested by the Authority, the Contractor shall promptly provide certificates of insurance evidencing coverage for each Subcontractor. The Authority shall have the right to contact the Subcontractors directly in order to verify the above coverage.

10.2.3 Endorsements and Waivers

All insurance policies required to be provided by the Contractor and its Subcontractors hereunder shall contain or be endorsed to comply with the following provisions, provided that, for the workers' compensation policy, only the fourth bullet shall be applicable:

- For claims covered by the insurance specified herein, all insurance coverage shall be primary insurance and non-contributory with respect to insurance maintained by the Authority, the Indemnified Persons, and their respective members, directors, officers, employees, agents and consultants, and shall specify that coverage continues notwithstanding the fact that the Contractor has left the Project. Any insurance or self-insurance beyond that specified in this Contract that is maintained by the Contractor, the Authority and the Indemnified Persons, or their members, directors, officers, employees, agents and consultants shall be in excess of, and shall not contribute with, the insurance required herein.
- Any liability failure on the part of the Contractor and its subcontractors to comply with reporting provisions or other conditions of the policies required herein, any breach of warranty, any action or inaction of the Contractor and its Subcontractors shall not affect coverage provided to the Authority and the Indemnified Persons and their respective members, directors, officers, employees, agents and consultants.
- All insurance to be provided herein shall include a "separation of insured" clause and shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. No policy shall contain any provision or exclusion (including a "cross-liability" or similar exclusion) that in effect would prevent, bar, or otherwise preclude any insured or additional insured under



the policy from making a claim that would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy. The requirements of this subsection do not apply to claims by the Contractor against any of its Subcontractors or suppliers or to claims between subcontractors and/or suppliers.

- Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, modified or reduced in coverage or in limits except after 45 days (ten days for non-payment of premium) prior written notice by certified mail, return receipt requested, has been given to the Authority. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.
- All endorsements adding additional insured to required policies shall be on form CG-20-10 (1985 edition) or an equivalent form and shall contain no limitations or exclusions with respect to "products/completed operations" coverage. The coverage shall be primary and non-contributory with respect to any other insurance maintained by an additional insured. Any insurance or self-insurance that is maintained by an additional insured, or their members, directors, officers, employees, agents and consultants shall be in excess of, and shall not contribute with the insurance required herein.

The automobile liability insurance policy shall be endorsed to include Motor Carrier Act Endorsement-Hazardous materials clean up (MCS-90) or its equivalent.

10.2.4 Waivers of Subrogation

The Contractor and the Authority each waives all rights of subrogation against each other and the Indemnified Persons, against each of their agents and employees and their respective members, directors, officers, employees, agents and consultants for any claims arising out of the performance of Work under this Project. The Contractor shall require any Contractor-Related Entity to provide similar waivers in writing each in favor of the Authority and the Indemnified Persons. The waivers required in this subsection do not apply to claims between subcontractors and/or subconsultants of the Contractor or those claims asserted by the Contractor against any subcontractors and/or suppliers. Each policy herein, including, workers' compensation, shall include a waiver of any right of subrogation against the Authority and the Indemnified Persons and any other additional insured and their respective members, directors, officers, employees, agents and consultants.

10.2.5 Changes in Requirements

The Authority shall notify the Contractor in writing of any changes in the requirements applicable to insurance required to be provided by the Contractor. Except as set forth in this "Changes in Requirements" clause, any additional cost from such change shall be paid by the Authority and any reduction in cost shall reduce the Contract Price pursuant to a Change Order.



10.2.6 No Recourse

All costs for insurance shall be considered incidental to and included in compensation allowed hereunder and no additional payment will be made by the Authority unless expressly specified in Section 10.2.6, Changes in Requirements.

10.2.7 Support of Indemnifications

The insurance coverage provided hereunder by the Contractor shall support but is not intended to limit the Contractor's indemnification obligations under the Contract Documents.

10.2.8 Commercial Unavailability of Required Coverage

If, through no fault of the Contractor, any of the coverage required in this "Insurance" clause (or any of the required terms of such coverage, including policy limits) become unavailable or are available only with commercially unreasonable premiums, the Authority will consider in good faith alternative insurance packages and programs proposed by the Contractor, with the goal of reaching agreement on a package providing coverage equivalent to that specified herein.

10.2.9 Authority's Right to Remedy Breach by Contractor

Failure on the part of the Contractor to maintain the insurance as required hereunder shall constitute a material breach of the Contract, upon which the Authority may, notwithstanding General Provision 7.12.2, Cure Periods, after giving five business days-notice to the Contractor to correct the breach, if not timely cured by the Contractor, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Authority on demand, or at the sole discretion of the Authority, offset against funds due the Contractor from the Authority.

10.2.10 Insurance Proceeds and Prosecution of Claims

Under certain circumstances, insurance policies required to be provided hereunder are intended to provide compensation to the Contractor for costs incurred by the Contractor. The Contractor shall be responsible for processing all such claims and shall not be entitled to receive a Change Order for any costs, which it could have recovered from the insurer. The Contractor agrees to report timely to the insurer(s) any and all matters, which may give rise to an insurance claim and to promptly and diligently pursue any and all insurance claims, whether for defense or indemnity or both.

10.2.11 Commencement of Work

The Contractor shall not commence Work under this Contract until it has obtained the insurance required under this "Insurance" clause, and has furnished to the Authority certificates of insurance evidencing the required coverage as required hereunder, nor shall the Contractor allow any subcontractor to commence Work under any subcontract until the insurance required of the subcontractor has been obtained, evidenced and approved by the Contractor. Upon request by the Authority, the Contractor shall provide the Authority with a certified copy of each insurance policy required hereunder.



10.2.12 Disclaimer

The Contractor and each subcontractor shall have the responsibility to make sure their respective insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage which they deem advisable, whether or not specified herein. Nothing in the Contract shall be construed as limiting in any way the extent to which the Contractor may be held responsible for any claims resulting from its performance of the work hereunder. The Contractor's obligations to procure insurance are separate and independent of its contractual defense and indemnity obligations. The coverage limits set forth in this "Insurance" clause are minimum requirements and the Authority does not represent that the minimum coverage and limits required hereunder will necessarily be adequate to protect the Contractor.

11 Mobilization

Mobilization payment shall not exceed a fixed total of 3 percent of the Contract Price and may be invoiced in three installments, as follows:

- 0.5 percent of the Contract Price at NTP-1 +30 days
- 0.5 percent of the Contract Price when 2.5 percent of the construction milestones of the Contract Price are earned
- 2 percent of the Contract Price when 5 percent of the construction milestones of the Contract Price are earned

12 Hazardous Materials

If the total quantity of either Class I or Class II Hazardous Waste is greater than or less than the estimated quantity set forth in the Signature Document by more than 25 percent, then either Party may seek an equitable adjustment in accordance with the "Changes" clause (Section 17) of the General Provisions.

13 Additional ATC Right-of-Way

If an approved ATC incorporated in the Proposal requires additional right-of-way not identified on the ROW Acquisition Plan, the Authority shall acquire such additional right-of-way within 24 months after the Contractor has submitted to the Authority a written request for such additional right-of-way. The request shall identify the additional right-of-way sought, along with a justification for its need, and shall include drawings depicting proposed geometric designs, construction limits and cross-sections. The Authority shall deduct the cost of such additional right-of-way (cost of right-of-way and related Authority services) from any payments otherwise owing to the Contractor, or the Authority may elect to invoice the Contractor for such costs and the Contractor shall pay such costs within 30 days after receiving an invoice therefor. If the Authority fails to provide access to any such additional right-of-way



within 24 months after receipt of the Contractor's complete request for such additional right-of-way, then the Contractor may seek an equitable adjustment in accordance with the "Changes" clause (Section 17) of the General Provisions.

ADDENDUM 6

